

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT G. SAENZ,

Plaintiff,

v.

BRINTON, *et al.*,

Defendants.

Case No. 1:23-cv-01303-BAM (PC)

ORDER REGARDING PLAINTIFF'S
VOLUNTARY DISMISSAL OF
DEFENDANT BRINTON
(ECF No. 16)

ORDER DIRECTING PLAINTIFF TO FILE
NOTICE OF VOLUNTARY DISMISSAL OR
FIRST AMENDED COMPLAINT

THIRTY (30) DAY DEADLINE

Plaintiff Robert G. Saenz ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On November 13, 2023, the Court screened Plaintiff's complaint and granted Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal. (ECF No. 14.)

Currently before the Court is Plaintiff's notice of voluntary dismissal of G. Brinton as defendant, filed December 14, 2023. (ECF No. 16.) The notice states that Plaintiff requests that the Court dismiss Defendant Gary Brinton from this action. (*Id.*) The notice contains no other information regarding whether Plaintiff intends to file an amended complaint or dismiss the remainder of this action.

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, "a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a

1 motion for summary judgment.’ ” *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193
 2 F.3d 1074, 1077 (9th Cir. 1999) (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir.
 3 1997)). The plaintiff may dismiss some or all of the defendants—or some or all of his claims—
 4 through a Rule 41(a)(1) notice. *Pedrina v. Chun*, 987 F.2d 608, 609 (9th Cir. 1993). Here, no
 5 defendants have appeared or filed an answer or a motion for summary judgment, so Plaintiff may
 6 voluntarily dismiss this action, or some of the defendants, pursuant to Rule 41(a)(1)(A)(i). The
 7 filing of a notice of voluntary dismissal automatically terminates the action as to the defendants
 8 who are the subjects of the notice, and unless otherwise stated, the dismissal is ordinarily without
 9 prejudice. *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934–35 (9th Cir. 1987).

10 Accordingly, pursuant to Plaintiff’s notice, Defendant Brinton is automatically dismissed
 11 from this action, without prejudice.

12 However, while the filing states Plaintiff’s intention to dismiss Defendant Brinton from
 13 this action, Plaintiff was directed to either file an amended complaint or a notice of voluntary
 14 dismissal. The Court clarifies that the option to file a notice of voluntary dismissal was with
 15 respect to the entirety of the action, rather than a single defendant.

16 Based on the foregoing, the Court finds it appropriate to grant Plaintiff an opportunity to
 17 file a response to clarify his intent. Plaintiff shall either file a notice of voluntary dismissal of the
 18 entire action, or Plaintiff may file a first amended complaint, **not to exceed twenty-five (25)**
 19 **pages**, in compliance with the Court’s November 13, 2023 screening order.

20 Accordingly, IT IS HEREBY ORDERED as follows:

- 21 1. Pursuant to Plaintiff’s notice of voluntary dismissal, (ECF No. 16), Defendant Brinton is
 22 DISMISSED from this action, without prejudice;
- 23 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file **one** of the
 24 following:
 - 25 a. A notice of voluntary dismissal of this entire action pursuant to Federal Rule of
 26 Civil Procedure 41(a)(1)(A)(i); **or**
 - 27 b. A first amended complaint, **not to exceed twenty-five (25) pages**, curing the
 28 deficiencies identified by the Court’s November 13, 2023 screening order, (ECF

No. 14);

3. **If Plaintiff fails to file a response in compliance with this order, the Court will recommend dismissal of this action, with prejudice, for failure to comply with a Court order and failure to state a claim.**

IT IS SO ORDERED.

Dated: **December 15, 2023**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE